the success of the corporation. The case of a dummy director is within the above rule, and the principal case accords with the one decision exactly in point. *State ex rel. Rankin* v. *Leete*, 16 Nev. 242. But where the purpose of creating a dummy director is to perpetrate a fraud, his eligibility is not sustained. *Bartholomew* v. *Bentley*, 1 Oh. St. 37; *Frank and Kneeland* v. *Lewis Foundry & Machine Co.*, 24 Pitts. Leg. J. (Pa.) 33.

CORPORATIONS — STOCKHOLDERS: POWERS OF MAJORITY — EMPLOYMENT OF ATTORNEYS TO DEFEND SUIT BROUGHT BY MINORITY TO RESTRAIN ULTRA VIRES ACTION. — The majority stockholders of a religious corporation in good faith employed the plaintiffs as counsel to defend an action brought by the minority stockholders to restrain an alleged improper use of a corporate fund. The defense of the majority was unsuccessful. The plaintiffs sought to recover of the corporation compensation for their services. *Held*, that the corporation is liable. *Kanneberg* v. *Evangelical Creed Congregation*, 131 N. W. 353 (Wis.).

The decision in the principal case may be supported on two grounds. Either it was within the power of the corporation acting through a majority of its stockholders to make the contract; or it was an executed *ultra vires* contract to which it has no defense. But the case raises the question as to the ultimate liability of the corporation for attorneys' fees in litigation between the majority and the minority stockholders. Recovery from the corporation by the minority is conditioned upon success. They are clearly entitled to reimbursement if they succeed in restoring assets to the corporation. *Trustees* v. *Greenough*, 105 U. S. 527. Generally they may recover if they preserve assets by restraining an improper use of property. *Forrester & MacGinnis* v. *Boston, etc. Mining Co.*, 29 Mont. 397. *Contra*, *Alexander* v. *Atlanta, etc. R. Co.*, 113 Ga. 193. Where the majority stockholders and not the corporation are the real party in interest, they must account for corporation funds paid to attorneys. *Wickersham* v. *Crittenden*, 106 Cal. 329. And where they have not acted in good faith, their claims against the corporation for legal expenses will not be allowed. *M'Court* v. *Singers-Bigger*, 145 Fed. 103. But for mistakes of judgment honestly exercised, the corporation must suffer. See *Ellerman* v. *Chicago Junction Railways, etc. Co.*, 49 N. J. Eq. 217, 232. This rule should apply where, as in the present case, the majority in good faith defend unsuccessfully an action brought by the minority shareholders.

CORPORATIONS — STOCKHOLDERS: RIGHTS INCIDENT TO MEMBERSHIP — SUIT IN BEHALF OF CORPORATION BY ONE ACQUIRING STOCK AFTER WRONG. — The plaintiff, a stockholder of a corporation, brought an action to set aside as fraudulent a transfer of the stock of the corporation. He acquired the stock after the transaction was completed. *Held*, that the plaintiff may maintain the action. *Pollitz* v. *Gould*, 45 N. Y. L. J. 591 (N. Y., Ct. App., April, 1911).

In order to put an end to collusive transfers of stock for the purpose of getting into the federal courts, the Supreme Court has adopted a rule of procedure which requires a stockholder, who brings an action like the one in the main case, to prove that he owned stock when the alleged fraud was committed. SUP. CT. RULES OF PRACTICE, Rule 94, 104 U. S. ix. See *Hawes* v. *Oakland*, 104 U. S. 450. At least one state court has come to the same conclusion, arguing from general equitable principles. *Home Fire Ins. Co.* v. *Barber*, 67 Neb. 644. But the decision in the principal case adds to an increasing weight of authority, and is to be welcomed as supporting the better view. For a full discussion of the principles involved, see 21 HARV. L. REV. 195.

COVENANTS OF TITLE — COVENANT AGAINST INCUMBRANCES — EASEMENTS. — In an action for specific performance of an agreement to buy a piece of land, which the vendor had covenanted should be free from incumbrances,

it appeared that an irrigation canal ran across the land by virtue of an easement. *Held*, that this does not amount to an incumbrance within the meaning of the covenant. *Schurger* v. *Moorman*, 117 Pac. 122 (Idaho).

For a discussion of the principles involved, see 24 HARV. L. REV. 237.

DAMAGES — MEASURE OF DAMAGES — EFFECT OF RESALE IN CASES OF DELAYED DELIVERY. — The defendant contracted to deliver wood pulp to the plaintiff by the last of November, 1900, at 25*s.* per ton. Delivery was not made until July 1, 1901. Pulp was then worth 42*s.* 6*d.* per ton. In November, 1900, it was worth 70*s.* per ton. The plaintiff resold the pulp under contracts, some anterior to the contract with the defendant, and some anterior to the date of actual delivery, at 65*s.* per ton. He then sued for damages caused by the delay. There was no question of consequential damages. *Held*, that he may recover only 5*s.* per ton. *Wertheim* v. *Chicoutimi Pulp Co.*, [1911] A. C. 301 (Privy Council).

The general intention of the law of damages is to place the plaintiff in as good a position as he would have been in if the contract had been performed, *i. e.* to compensate only. *Hamilton* v. *Magill*, 12 L. R. Ir. 187, 202. With this in view, a formula for compensating for late delivery in sales of personalty has been often adopted, namely, "the difference between the value of the goods at the date fixed for delivery, and their value when delivered." This rule is, speaking generally, correct. *Clement & Hawkes Mfg. Co.* v. *Meserole*, 107 Mass. 362, 364. See BENJAMIN, SALES, 5 ed., 987. The principal case, however, gives as the proper measure of damages the difference between the value when the goods should have been delivered and the value represented by the price for which they were resold. If the contracts of resale could be satisfied by delivering this specific pulp only, then the rule of the principal case is probably correct. But, if any pulp of that certain grade would have answered the purposes of the sub-sale, it seems that the defendant should not take advantage of the plaintiff's good bargain in reselling. *Cf. Floyd* v. *Mann*, 146 Mich. 356, 369; *Rodocanachi, Sons & Co.* v. *Milburn Bros.*, 18 Q. B. D. 67, 77. But *cf. Foss* v. *Heineman*, 128 N. W. 881 (Wis.). The facts are not clear as to this. The case, however, is novel and there is a dearth of authority directly on the point decided.

DEATH BY WRONGFUL ACT — STATUTORY LIABILITY — PENAL STATUTES. — The sole beneficiary under the death statute released all claim of damages for the death. The administrator of the deceased now sues under the statute. *Held*, that the release operates as a bar. *Kennedy* v. *Davis*, 55 So. 104 (Ala.).

In an action for death by wrongful act, under the Missouri death statute, the plaintiff, the widow of the deceased, offered evidence of the number and ages of her minor children as evidence of loss of support. *Held*, that the evidence is admissible, as the statute is "remedio-penal." *Boyd* v. *Missouri Pacific Ry. Co.*, 139 S. W. 561 (Mo., Supr. Ct.).

The death statutes of most of the states are copied from Lord Campbell's Act, 9 & 10 VICT. c. 93, §§ 1, 2. Three states, however, have death statutes which do not, like that act, provide for damages based on the injury caused by the homicide. The Massachusetts statute provides for damages proportioned to the degree of culpability. MASS. R. L., c. 171, § 2. The Massachusetts decisions hold this statute penal. *Hudson* v. *Lynn & Boston R. Co.*, 185 Mass. 510. Yet a recent Massachusetts case intimates that there can be but one recovery against joint offenders. See *D'Almeida* v. *Boston & Maine R. Co.*, 95 N. E. 398, 399 (Mass.). The Alabama statute provides for damages "such as the jury may assess." ALA. CODE, § 2486. The Alabama court has many times held this statute penal, and excluded evidence of pecuniary loss. *Louisville & Nashville R. Co.* v. *Tegner*, 125 Ala. 593. Yet the same court has held that the defendant may be forced to give evidence against himself, as the